

**CHIROPRACTIC EXAMINING BOARD
MINUTES
April 28, 2005**

PRESENT: Steven Conway, Char Glocke , Susan Feith, Wendy Henrichs,
James Weber, Steven Silverman

EXCUSED: None

STAFF PRESENT: Jeff Scanlan, Director of Health Service Professions; Dennis Schuh;
Legal Counsel, Gina York, Bureau Assistant, and Division of
Enforcement and other staff

GUESTS: Jason E. Johns, WPTA; Russ Leonard, WCA; Mary H. Michal,
Reinhart, Boerner, & Van Deuren, S.C.; Shirley Greenwald, Self; and
James Greenwald, Self

CALL TO ORDER

James Weber, Chair, called the meeting to order at 8:04 a.m. A quorum of six members was present.

APPROVAL OF AGENDA

Additions to the Agenda:

- Open Session: After Presentation of Proposed Stipulations Received After the Mailing of the Agenda - Add Names Bevier H. Sleight, III, D.C. and Paul Bekkum, D.C.
- Open Session: Under Item L. – Add FYI: FCLB Slate of Officers & Proposed Bylaw Amendments
- Closed Session: After Monitoring Received After the Mailing of the Agenda – Jeffrey Mason, D.C.
- Closed Session: Remove Item R. Application Review by Endorsement- Jeffrey M. Hoefen, D.C.
- Closed Session: After Deliberation of Proposed Stipulations Received After the Mailing of the Agenda – Add Names Bevier H. Sleight, III, D.C. and Paul Bekkum, D.C.

MOTION: Wendy Henrichs moved, seconded by Char Glocke, to approve the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF FEBRUARY 24, 2005

Amendments to the Minutes:

None.

MOTION: Wendy Henrichs moved, seconded by Steven Conway, to approve the February 24, 2005 minutes as written. Motion carried unanimously.

ADMINISTRATIVE REPORT

Jeff Scanlan, Director of Health Service Professions, informed the Board that a new DRL Secretary has been appointed by the Governor. Kimberly Nania, Administrator of the Division of Board Services, introduced the new Secretary Celia Jackson to the Board at today's meeting. Mr. Scanlan shared that there will be a budget report and a presentation regarding the rules process and the role of the Small Business Review Advisory Committee. Mr. Scanlan discussed the Regulatory Digest with the Board for their input and to see if they are interested in publishing this document twice a year on the DRL Website.

BUDGET REPORT SANDRA ROWE

Jeff Scanlan, Director of Health Service Professions, reported on the behalf of Deputy Secretary Rowe, the status of the DRL budget and proposals by the Governor's Office. Mr. Scanlan shared there have been additional proposed cuts for the DRL. It has been proposed that 11.85 FTE positions will be eliminated and one LTE position. There has also been a proposal to do an attorney consolidation, which would affect 28 FTE positions at DRL. Those positions and staff would physically be moved to another department. If this consolidation occurs DRL would then be purchasing legal services from that department which would determine who would be available. At this time, this will not affect the investigative staff and they will remain at the Department. Currently, the budget is being reviewed by the Joint Finance Committee. The Board expressed concerns regarding such a consolidation and felt that it is extremely important that legal staff is familiar with their rules and interpretation of them. After some additional discussion, the following action as taken.

MOTION: Wendy Henrichs moved, seconded by Steven Conway, to designate Steven Conway to prepare a letter to the Joint Finance Committee making them aware of their opposition to the attorney consolidation program as it would have a significant negative impact on public safety and congruency of decisions made by the Chiropractic Examining Board. Motion carried unanimously.

**SMALL BUSINESS REVIEW ADVISORY COMMITTEE
CHRIS KLEIN**

Chris Klein, Legislative Liaison, presented information regarding a change in the rules process due to the passing of Act 145 in the last legislative session, which now requires all rules to have a small business review. Mr. Klein explained to the Board the role of the two separate bodies that will be reviewing rules for small businesses, the DRL Small Business Review Advisory Committee and the separate Small Business Regulatory Review Board. Each of their roles will be to review all rules that may affect small business with less than twenty-five employees and have an income of less than five million dollars a year. These bodies will determine if it will have a significant impact on small business and then make recommendations to the Board for their review and adoption. Each Board will determine when they wish to have the Small Business Review Advisory Committee review done. The Department's Committee plans to do reviews on a quarterly basis to keep abreast of all pending rules and ensure timely impact determinations are made.

DISCUSSION REGARDING APPOINTMENT OF A GOODWILL AMBASSADOR

Jeff Scanlan, Director of Health Service Professions, shared with the Board the appointment of a good will ambassador and that person's role. The appointee would give recognition to institutions or individuals for outstanding achievements in Chiropractic and this individual would provide reports to the Board on such activities. The Board discussed appointing a goodwill ambassador, what that person's role would be in that capacity, the process for preparing such letters, and took the following action.

MOTION: Steven Conway moved, seconded by Steven Silverman, to designate Wendy Henrichs as the good will ambassador for the Chiropractic Examining Board. Motion carried unanimously.

PRESENTATION OF PROPOSED STIPULATIONS – GREGORY M. BLAU, D.C.

James Polewski present the proposed stipulation regarding Gregory M. Blau, D.C. to the Board at today's meeting.

**PRESENTATION OF PROPOSED STIPULATIONS THAT MAY BE SIGNED
AFTER THE MAILING OF AGENDA**

Jack Zwieg and Gil Lubcke presented the two additional stipulations received after the mailing of the agenda to the Board at today's meeting. They were regarding the following individuals Bevier H. Sleight, III, D.C. and Paul Bekkum, D.C.

Board member, Susan Feith, asked questions surrounding the stipulation regarding Bevier H. Sleight, III, D.C. to Attorney Jack Zwieg. Ms. Feith's issues and questions regarding whether the Board had the authority under Wisconsin Administrative codes or statutes to issue a temporary suspension or a summary suspension to prevent Bevier Sleight, III, D.C. from practicing while any further board action or negotiations take place and could that opportunity be taken in this case due to the seriousness of the allegations? Additional questions and concerns were made by Ms. Feith and Attorney Zwieg responded to each as they arose.

SUMMARY REPORTS ON PENDING COURT CASES, DISCIPLINARY CASES AND ADMINISTRATIVE RULES AND PRESS RELEASES – DENNIS SCHUH

Dennis Schuh, Legal Counsel, was available for review and answering questions of the Board surrounding the summary reports at today's meeting.

STATUS REPORT ON RULES AND STATUTES REVIEW OF PENDING RULES DENNIS SCHUH

Dennis Schuh, Legal Counsel, provided an update regarding the status of rules and statutes. He reviewed pending rules 02-020 and 01-118 with the Board at today's meeting.

Rule 02-020

This rule was reviewed and discussed at length by the Board and the following motion was made.

MOTION: Wendy Henrichs moved, no second, to withdraw rule 02-020. Motion failed due to a lack of a second.

The Board requested that this rule be placed on the next agenda while Dennis Schuh, Legal Counsel, gathers additional information as identified by the Board.

Rule 01-118

This rule was reviewed and discussed by the Board and it was decided that rule 01-118 would be kept in active status until Dennis Schuh, Legal Counsel has gathered additional information and to place this rule on the next meeting agenda.

DISCUSSION ON TRAINING AND EDUCATION REQUIREMENTS FOR NEW THERAPIES

Jeff Scanlan, Director of Health Service Professions, discussed with the Board the scope statement, which is in the process of being drafted for future approval and publication. Mr. Scanlan has already completed the four surrounding state analysis on what their administrative rules currently are regarding this topic. After today's discussion with specific information and input provided from the Board, he will prepare the proposed draft language for this scope statement. The board asked for this scope statement to move ahead in the rule-making process which includes publication.

PRECEPTOR APPROVALS

The Board reviewed the list of preceptors provided by Julie Reimann, Credentialing, for the Board's approval. The list included the following individuals: Jill Rubert, D.C.; Robert Sell, D.C. ; Michael J. Anderson, D.C. ; Karen I. Gould, D.C. ; Jenni R. Haak, D.C.; Todd M. Tesch, D.C. ; Christine M. Krsko, D.C.; Lisa P. Reid, D.C.

MOTION: Steven Conway moved, seconded by Susan Feith, to approve the preceptors presented at the April 28, 2005 meeting. Motion carried unanimously.

PRECEPTOR APPROVAL FOR REQUESTS RECEIVED AFTER THE PRINTING OF THE AGENDA

None.

DELEGATION OF FINAL DECISION AUTHORITY

Dennis Schuh, Legal Counsel, addressed with the Board the delegation of final decision of authority at today's meeting. After a lengthy discussion, Chair, James Weber, asked if someone would like to make a motion to delegate the final decision authority. No motion was made.

DOE UPDATE TO THE BOARD REGARDING PENDING CASES

Noted.

**DISCUSSION AND REVIEW OF THE LICENSURE BY ENDORSEMENT PROCESS
JULIE REIMANN**

Dennis Schuh, Legal Counsel, discussed with the Board to grant the delegation of approving licensure by endorsement to Julie Reimann, Credentialing. Ms. Reimann has been noting her recommendations to the Board during the last several months. As requested by the Board this process would continue until at a later date it would decide whether to designate this task to her. These applications would bypass the Board; except for unusual endorsement licensure requests. After some discussion, the Board took the following action.

MOTION: Wendy Henrichs moved, seconded by Char Glocke, to give the Credentialing Division the authority to grant licensure by endorsement when the application does not present concerns. Opposed – Susan Feith, Steven Conway. Motion carried.

**DISCUSSION REGARDING MAY 2005 PART IV PRACTICAL
EXAMINATION PROGRAM**

The Board had a discussion regarding the May 2005 Part IV Practical Examination Program. There was no Board member available to attend this year's session. Mr. Scanlan will contact NBCE and notify them that there will not be a representative from the Wisconsin Chiropractic Examining Board attending this program. Mr. Scanlan will ask NBCE if they could provide dates for 2006 for Board members to consider attending next year.

Jeff Scanlan, Director of Health Service Professions, did verify with Kimberly Nania that Board members are not allowed to accept an honorarium.

**DISCUSSION REGARDING JUNE 2005 PART IV PRACTICAL EXAMINATION
TEST COMMITTEE MEETING**

The Part IV Practical Examination Test Committee Meeting was discussed by the Board. At this time, no Board member will be able to attend this meeting. Jeff Scanlan, Director of Health Service Professions, will contact NBCE and notify them that the Wisconsin Chiropractic Examining Board will not be attending the committee meeting. Mr. Scanlan will ask NBCE if they have any dates set for 2006 so Board members can consider attending in the future.

CORRESPONDENCE AND REVIEW OF INFORMATION REGARDING ANODYNE THERAPY

Jeff Scanlan, Director of Health Service Professions, reviewed with the Board the correspondence and information he received from Dr. McCown regarding anodyne therapy, which uses infrared light. After some discussion, regarding this issue the Board took the following action.

MOTION: Steven Conway moved, seconded by Wendy Henrichs, that Dennis Schuh, Legal Counsel, will send a letter to Janette McCown, D.C. He will provide reference to the scope of practice for Chiropractic including infrared light and advise her that anyone using this therapy or its application of it, must stay within the scope of practice. Motion carried unanimously.

CORRESPONDENCE FROM WCA REGARDING “DUTY TO REFER”

Russ Leonard, WCA, presented information to the Board regarding the issue of duty to refer and reviewed the main points of his correspondence that he presented to the Board. There was a lengthy discussion among Board members with Mr. Leonard regarding this topic. They specifically discussed and shared concerns regarding the duty to refer, the privacy rights of the patient, the mechanism to do such a function, and the reliability of a chiropractor. This topic will be placed on the next meeting agenda for further discussion.

DISCUSSION WITH WCA REGARDING BOUNDARY AND ETHICS TRAINING

Russ Leonard, WCA, presented a copy of an article that the Wisconsin Chiropractic Association (WCA) would like to send out to its members to assist in clarifying boundary and ethics training. Mr. Leonard would like to continue the submission of additional articles to the Board for review, discussion and approval. Mr. Leonard is willing to place a disclaimer on all of such articles, which will inform chiropractors to consult with the Wisconsin Chiropractic Examining Board or their personal attorney. Dennis Schuh, Legal Counsel, shared some concerns, which could affect the Department and the Board regarding the approval of such articles. The Board requested that there be further discussion and consultation with Legal Counsel regarding this issue and how best to handle getting information out to licensees. Some suggestions were the use of an online Regulatory Digest or to consider doing Board position papers for posting on the DRL Website. Dennis Schuh, Legal Counsel, will prepare a memo for inclusion in the next agenda packet outlining the specific concerns and multiple issues that could arise surrounding this topic.

MOTION: Susan Feith moved, seconded by Char Glocke, to request WCA to remove all references of the Wisconsin Chiropractic Examining Board from this article and all future articles; and also any inference that these documents have been created, endorsed, or supported by the Board; until further determination of this process and any legal implications have been made by the Board. Motion carried unanimously.

INFORMATIONAL ITEMS

The Board noted all informational items at today's meeting.

CORRESPONDENCE AND PHONE INQUIRIES BY LEGAL COUNSEL

There were no correspondence or phone inquiries present to the Board by Dennis Schuh, Legal Counsel, at today's meeting.

VISITOR COMMENTS

Noted.

CONVENE TO CLOSED SESSION

MOTION: Steven Conway moved, seconded by Wendy Henrichs, to adjourn to closed session pursuant to Wisconsin state statutes 19.85(1)(a)(b)(f) and (g) to consult with Legal Counsel regarding the Suit by WCA, deliberate on proposed stipulations, deliberate on proposed administrative warnings, deliberate on monitoring issues, application review, monitoring report and DOE case status reports. Motion carried by roll call vote: Steven Conway-yes; Susan Feith-yes; Wendy Henrichs-yes; Char Glocke-yes; Steven Silverman-yes; and James Weber-yes.

Open Session recessed at 12:30 p.m.

RECONVENE TO OPEN SESSION

MOTION: Wendy Henrichs moved, seconded by Char Glocke, to reconvene into open session at 4:18 p.m. Motion carried unanimously.

VOTE ON ITEMS CONSIDERED OR DELIBERATED ON IN CLOSED SESSION

MONITORING

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APPEARANCES BEFORE THE BOARD

RANDAL ARNOLD, DC

MOTION: Char Glocke moved, seconded by Wendy Henrichs , to deny full reinstatement of licensure to Randal Arnold, D.C. Motion carried unanimously.

HAROLD DYKEMA, DC

MOTION: Char Glocke moved, seconded by Steven Silverman, to deny his request for full reinstatement of licensure, to Harold Dykema, D.C. Reason for Denial: Due to insufficient evidence to the Board, that Dr. Dykema has been rehabilitated in his treatment techniques. James Weber did not participate during the appearance, deliberation, or voting at today's meeting. Abstained- James Weber. Motion carried.

RICHARD HORAITIS, DC

MOTION: Steven Conway moved, seconded by Char Glocke, to deny full reinstatement of licensure to Richard Horaitis, D.C. Motion carried unanimously.

REQUESTS FOR FULL REINSTATEMENT OF LICENSURE

ROBERT CARPENTER, DC

MOTION: Wendy Henrichs moved, seconded by Steven Conway, to deny full reinstatement of licensure to Robert Carpenter, D.C. Motion carried unanimously.

SCOTT RISE, DC

MOTION: Steven Silverman moved, seconded by Susan Feith, to postpone a decision regarding full reinstatement of licensure to Scott Rise, D.C. due to non-receipt of the pending criminal court appeal process. Motion carried unanimously.

**DELIBERATION OF MONITORING ISSUES THAT MAY BE RECEIVED AFTER
MAILING OF AGENDA**

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JEFFREY MASON, D.C.

MOTION: Wendy Henrichs moved, seconded by Char Glocke, to deny the request of Jeffrey Mason, D.C. Motion carried unanimously.

APPLICATION REVIEW BY ENDORSEMENT

JEFFREY M. HOEFEN, DC

***** This was removed from the April 28, 2005 agenda at the beginning of today's meeting. *****

APPLICATIONS RECEIVED AFTER THE MAILING OF THE AGENDA

None.

STIPULATIONS

GREGORY M. BLAU, D.C.

MOTION: Steven Conway moved, seconded by Wendy Henrichs, to adopt the Findings of Fact, Conclusions of Law, Order, and Stipulation in the matter of Gregory M. Blau, D.C. Motion carried unanimously.

**DELIBERATION OF PROPOSED STIPULATIONS THAT MAY BE SIGNED AFTER
MAILING OF THE AGENDA**

BEVIER H. SLEIGHT, III, D.C.

MOTION: Steven Silverman moved, seconded by Susan Feith, to reject the Stipulation in the matter of Bevier H. Sleight, III, D.C. Roll Call vote: Steven Conway-yes; Susan Feith-yes; Char Glocke-yes; Wendy Henrichs-No; Steven Silverman-yes; James Weber-No. Tally of Voting: Yes-4 and No-2. Motion carried.

PAUL BEKKUM, D.C.

MOTION: Char Glocke moved, seconded by Susan Feith, to adopt the Findings of Fact, Conclusions of Law, Order, and Stipulation in the matter of Paul Bekkum, D.C. Motion carried unanimously.

**DELIBERATION OF PROPOSED ADMINISTRATIVE WARNINGS RECEIVED
AFTER MAILING OF AGENDA**

None.

DIVISION OF ENFORCEMENT CASE STATUS REPORT

None.

OTHER DOE CASES SUBMITTED AFTER THE MAILING OF THE AGENDA

None.

OTHER BOARD BUSINESS

There was no other Board business to be addressed at today's meeting.

ADJOURNMENT

MOTION: Wendy Henrichs moved, seconded by Susan Feith, to adjourn the meeting at 4:28 p.m. Motion carried unanimously.

